

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

**SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947**

March 15, 2006

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**RE: Marati, Inc., Clayton A. Marchetti and James M. Pilati v.
Agrinio, Ltd., Nicholas Lekatsas and Basile Efstathiou v.
Dionyslos Lekatsas
C.A. No. 03C-06-014**

Date Submitted: February 8, 2006

Dear Counsel:

On January 24, 2006, the Court granted summary judgment in favor of Basile Efstathiou in regard to plaintiff's claim for a deficiency judgment.

Plaintiff's counsel, who had not filed a timely brief in accordance with the scheduling order sought relief from the January 24, 2006 order by way of a Superior Court Rule 60(b) motion. Relief was granted, the January 24, 2006 order was vacated and the briefs were accepted.

After study of the parties respective positions, I grant summary judgment in favor of Mr. Efstathiou. This ruling is likewise fatal to plaintiffs claim against the remaining defendants.

Approximately six years ago, plaintiffs sold a restaurant to Agrinio, Ltd. Mr. Efstathiou personally guaranteed a note by Agrinio, Ltd. in favor of plaintiffs. The equipment and other personalty located at the restaurant was given as collateral for the loan. The transaction was settled upon as a secured transaction under the Uniform Commercial Code.

What this meant is that plaintiffs sold the collateral and retained only a secured interest in the property. Plaintiffs did not own the property. Agrinio, Ltd. owned it.

When Agrinio, Ltd. defaulted, plaintiffs took possession of the restaurant, changed the locks and sold the secured personal property.

The property was sold for \$40,000 which was credited against the note balance. Then Plaintiffs brought this action for the deficiency.

Plaintiffs' problem is that they took possession of the collateral and sold it within two days. Plaintiffs claim haste was necessary because they heard of potential tax liens against Agrinio, Ltd., but counsel acknowledges plaintiff's secured interest would have been superior to any threatened liens.

Plaintiffs decided to sell the property privately and made no attempt to notify any defendants, nor did they make any reasonable investigation to locate defendants in order to provide necessary notice of the private sale.

Plaintiffs are required to conduct a commercially reasonable sale. Plaintiffs are required to give reasonable notice to the defendants or at least make a reasonable investigation as to how notice might be given. Selling the collateral in two days in a private sale without any real emergency and without any attempt to try to locate the defendants was not commercially reasonable.

The failure to conduct a commercially reasonable sale with reasonable notice to defendants is fatal to Plaintiff's attempt to seek a deficiency judgment. 6 Del.C. § 9-504: Friendly Finances Corporation v. Bovee, 702 A2 1255 (Del. 1997).

Summary judgment is entered in favor of Basile Efstathiou. Even though the remaining defendants did not join this motion, it is equally applicable to them.

Therefore Summary Judgment is entered in favor of all defendants and the case is dismissed.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

THG/lsm
cc: Prothonotary